Stroud's Judicial Dictionary of Words and Phrases

First Supplement

Ninth Edition

Daniel Greenberg
Counsel for Domestic Legislation, House of Commons; General Editor, Westlaw UK Annotated Statutes and Insight Encyclopaedia

SWEET & MAXWELL

THOMSON REUTERS

Published in 2017 by Thomson Reuters, trading as Sweet & Maxwell. Registered in England & Wales, Company No.1679046. Registered Office and address for service: 5 Canada Square, Canary Wharf, London, E14 5AQ.

For further information on our products and services, visit *www.sweetandmaxwell.co.uk*

Typeset by Letterpart Limited, Caterham on the Hill, Surrey, CR3 5XL.

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY.

No natural forests were destroyed to make this product: only farmed timber was used and re-planted.

A CIP catalogue record of this book is available from the British Library.

ISBN: 978-0-414-06614-4

Preface

As with recent editions of *Stroud*, the intention is to provide annual cumulative supplements noting new judicial and statutory definitions.

The editorial policy remains as stated in the preface to the main work. In particular, *Stroud* is a judicial dictionary, and not a legal dictionary: it is dependent, as it always has been, on the courts and legislatures for the provision of definitions. The result is that there will be expressions of importance to lawyers or related professions that do not feature in *Stroud* because their definition has not fallen to be considered in a decided case or glossed by statute. Equally, there are many expressions that would have no place in a legal dictionary—not being terms of art forming part of the mechanism or structure of the law—that have been defined by the courts or legislature in a way likely to be helpful to lawyers and related professions, and that are therefore included in *Stroud*.

In this respect, Stroud sees itself as a companion work to *Jowitt's Dictionary of English Law*, which aims to define terms forming part of the structure of the law whether or not they have received recent judicial or statutory definition.

I am grateful to my son Yisroel for supplying statutory material for this supplement.

This supplement is up to date to the end of July 2017.

I have taken the unusual step of including in this supplement a number of definitions from a Bill that is now before Parliament but had not been passed at the time of printing: the European Union (Withdrawal) Bill is of such importance, and the concepts that it defines are likely to be of such significance for practitioners in all fields over the next few years, that it seemed important not to wait until the second supplement. I have therefore included all the key definitions, despite the fact that in point of clarity many of them are obviously and deeply unsatisfactory.

Stroud has benefited greatly over the years from comments and suggestions provided by readers. All communications are always most gratefully received and should be sent to the publishers in the first instance.

Daniel Greenberg
London
August 2017

A

ABNORMAL OCCURRENCE. "I would accept the charterers' submission recorded in sub-para 44(iii) that an 'abnormal occurrence' has its ordinary meaning. It is not a term of art. As stated in that sub-paragraph, '[a]n occurrence was just an event—something that happened on a particular time at a particular place in a particular way. "Abnormal" was something well removed from the normal. It was out of the ordinary course and unexpected. It was something which the notional charterer would not have in mind.' . . . It is to my mind important to note the emphasis in the cases upon the meaning of the expression 'abnormal occurrence'. I would accept the charterers' submission in para 44(iii) of the Court of Appeal's judgment that 'abnormal' is something well removed from the normal. It is out of the ordinary course and unexpected. It is something which the notional charterer or owner would not have in mind." *Gard Marine and Energy Ltd v China National Chartering Company Ltd* [2017] UKSC 35.

ACCESSORY. "Nor is it a natural meaning of the word 'accessory'. To take the UT's example, a bicycle bell can fairly be described as an 'accessory' to the bicycle, even if does not add to its range of functions. 41. A better answer is one which distinguishes more clearly between the printer itself, and the materials used by it. Ink and paper are both necessary for the printer to do its work. But one would not naturally describe either as a 'part or accessory' of the printer, any more than petrol would be regarded as a 'part or accessory' of a car. The words 'particular service relative to' its function need to be more narrowly construed as referring to services directly connected with the mechanisms or processes by which it performs that function. As Advocate-General Kokott said in *Turbon* 2 (para 72), the ink though 'suitable solely for use' with this type of printer, was not essential for its 'mechanical and electronic functioning'. This approach is also consistent with the ultimate conclusion of the court in *Turbon* 2. Although the cartridge (unlike the ink) played a part in the mechanical functioning of the printer, its dominant or 'essential' function was to supply it with ink." *Amoena (UK) Ltd v Revenue and Customs* [2016] UKSC 41.

ACCOMMODATION. See SETTLED ACCOMMODATION.

ACT OF STATE. For discussion of the nature and scope of the doctrine see *Rahmatullah (No 2) v Ministry of Defence (Rev 1)* [2017] UKSC 1.

ACT OR NEGLECT. "Specifically, the issue is whether the term 'act' in the phrase 'act or neglect' means a culpable act in the sense of fault or whether it means any act, whether culpable or not. . . . In my judgment, since clause 8 envisages a 'more or less mechanical apportionment of liability', the word 'act' in clause 8(d) would reasonably be understood to bear its ordinary and natural meaning of any act without regard to questions of fault. Since clause 8(d) is a sweeping up provision the sphere of risk cannot be identified. Instead, the justification in clause 8(d) for apportioning a cargo claim 100% to a party is that the claim arose out of that party's act. 'Neglect' is used to encompass claims which arise, not out of a party's act, but out of a party's

failure to act. I accept that 'neglect' can sensibly only mean a failure to do that which the party ought to do. But by contrast 'act' can sensibly mean any act, whether culpable or not." *Transgrain Shipping (Singapore) PTE Ltd v Yangtze Navigation (Hong Kong) Co Ltd* [2016] EWHC 3132 (Comm).

ACTUAL OCCUPATION. "The authorities seem to me to support the following propositions as regards 'actual occupation':

i) The word 'actual' in 'actual occupation' 'emphasises that what is required is physical presence, not some entitlement in law' (*Williams & Glyn's Bank Ltd v Boland* [1981] AC 487, at 505, per Lord Wilberforce);

ii) The nature of the relevant property can matter. 'Occupation', Lord Oliver explained in *Abbey National Building Society v Cann* [1991] AC 56 (at 93), is a 'concept which may have different connotations according to the nature and purpose of the property which is claimed to be occupied'. In a similar vein, Arden LJ observed in *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151, [2002] Ch 216 (at paragraph 80), 'What constitutes actual occupation of property depends on the nature and state of the property in question';

iii) 'Occupation' involves 'some degree of permanence and continuity which would rule out mere fleeting presence' (to quote again from Lord Oliver in *Abbey National Building Society v Cann*, at 93). Lord Oliver went on to say (at 93), 'A prospective tenant or purchaser who is allowed, as a matter of indulgence, to go into property in order to plan decorations or measure for furnishings would not, in ordinary parlance, be said to be occupying it, even though he might be there for hours at a time'. On the other hand, '[r]egular and repeated absence' can be consistent with 'actual occupation': see *Kingsnorth Finance Co Ltd v Tizard* [1986] 1 WLR 783, at 788;

iv) 'Occupation' does 'not necessarily … involve the personal presence of the person claiming to occupy' (Lord Oliver in *Abbey National Building Society v Cann*, at 93). In the Cann case, Lord Oliver expressed the view (at 93) that a 'caretaker or the representative of a company can occupy … on behalf of his employer'. In *Lloyds Bank Plc v Rosset* [1989] Ch 350, Nicholls LJ (in the Court of Appeal) considered that 'the presence of a builder engaged by a householder to do work for him in a house is to be regarded as the presence of the owner when considering whether or not the owner is in actual occupation' (see 378). In *Kling v Keston Properties Ltd* (1983) 49 P&CR 212, Vinelott J considered the plaintiff to have been in 'actual occupation' of a garage in which his wife's car had been confined because the door was blocked and thought that the result would probably have been the same even if the car had not been physically trapped: the plaintiff, Vinelott J suggested (at 219), 'should be treated as being in continuous occupation of the garage while he was using it in the ordinary course for the purpose for which the licence was granted, that is, for garaging a car as and when it was convenient to do so';

v) In contrast, 'actual occupation' by a licensee on his own behalf does not represent 'actual occupation' by the licensor (see *Strand Securities Ltd v Caswell* [1965] Ch 958, at 980–981 and 984, and *Lloyd v Dugdale* [2001] EWCA Civ 1754, [2002] 2 P&CR 13, at paragraph 45). Nor does receipt of rents and profits now suffice to give protection. Section 70(1)(g) of the Land Registration Act 1925, the predecessor of paragraph 2 of Schedule 3 to the 2002 Act, referred to the rights of a person 'in actual occupation of the land or in receipt of the rents and profits thereof'. Nothing comparable to the italicised words is to be found in the 2002 Act;

vi) Even in the case of a house, 'occupation' need not involve residence. In *Lloyds Bank Plc v Rosset*, Nicholls LJ said (at 377) that he could 'see no reason, in principle or in practice, why a semi-derelict house … should not be capable of actual occupation whilst the works proceed and before anyone has started to live in the building'. See too *Thomas v Clydesdale Bank Plc* [2010] EWHC 2755 (QB);

vii) Occupation needs to be distinguished from mere use. In *Chaudhary v Yavuz* [2011] EWCA Civ 1314, [2013] Ch 249, use of a metal staircase and landing for the purpose of passing and repassing between some flats and the street was held not to amount to 'actual occupation'. Such activity, Lloyd LJ said (at paragraph 30), is 'use, not occupation';

viii) As Mummery LJ observed in *Link Lending Ltd v Hussein* [2010] EWCA Civ 424 (at paragraph 27), when determining whether a person is in 'actual occupation':

'The degree of permanence and continuity of presence of the person concerned, the intentions and wishes of that person, the length of absence from the property and the reason for it and the nature of the property and personal circumstances of the person are among the relevant factors';

ix) An interest belonging to a person in 'actual occupation' will be protected only if and so far as it relates to land of which he is in actual occupation. This is evident from the wording of paragraph 2 of Schedule 3 to the 2002 Act, which in this respect differs significantly from that of section 70(1)(g) of the Land Registration Act 1925;

x) The date on which a person must have been in 'actual occupation' to rely on paragraph 2 of Schedule 3 to the 2002 Act is the date of the disposition, i.e. completion." *Baker v Craggs* [2016] EWHC 3250 (Ch).

ADJOURNED. "The Court of Appeal, in ordering that any further enforcement of the award should be 'adjourned' under section 103(5) pending determination of the section 103(3) proceedings, was, therefore, misusing the word in the context of section 103(5). Of course, any decision of an issue raised under section 103(2) or (3) may take a court a little time, even if it is only while reading the papers, or adjourning overnight or for a number of weeks, in order to consider and take the decision. But that does not mean that 'the decision' was being adjourned within section 103(5). On the contrary, delays of this nature are all part of the decision-making process." *IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation (Rev 1)* [2017] UKSC 16.

ANY. "Ms Slow prays in aid the decision of Eve J in *Clarke-Jervoise v Scutt* [1920] 1 Ch 382. That case concerned a tenancy agreement in which the tenant agreed not to plough 'any grass land'. Eve J construed that phrase broadly as meaning all land covered in grass either at the date of the demise or subsequently. He therefore treated the word 'any' as meaning 'all'. I readily understand, and respectfully agree with, the decision in that case. But the judge arrived at his conclusion specifically by reference to the context in which the word 'any' appeared: see page 388. He was not saying that in every context 'any' means 'all'." *Balfour Beatty Regional Construction Ltd v Grove Developments Ltd* [2016] EWCA Civ 990.

APPROVED PREMISES. "Approved premises are premises which have been approved by the Secretary of State under the Offender Management Act 2007, among other things 'for, or in connection with, the supervision or rehabilitation of persons convicted of offences' (section 13(1)(b)). Under section 2 of that Act, the Secretary of State is responsible for ensuring that sufficient provision is made throughout England and Wales for 'probation purposes'. These are defined in section 1(1)(c) to include 'the supervision and rehabilitation of persons charged with or convicted of offences'.

Under section 1(2)(b) to (d), this includes, in particular, assisting in the rehabilitation of offenders being held in prison, supervising persons released from prison on licence and providing accommodation in APs. Under the current Offender Management Act 2007 (Approved Premises) Regulations 2014 (SI 2014/1198), Regulation 6(1)(a)(iii), among the general duties of providers of APs is a requirement that 'at least two members of staff are present on the premises at all times' (the same was required by the predecessor Regulations (SI 2008/1263), Regulation 7(1)(a)(iii)). Assuming three eight-hour shifts in a day, this means that each AP must have a minimum of six staff no matter how many people are housed there.

10. According to Probation Circular 37/2005, The Role and Purposes of Approved Premises, APs are 'a criminal justice facility where offenders reside for the purposes of assessment, supervision and management, in the interests of protecting the public, reducing re-offending and promoting rehabilitation'. Their 'core purpose' is 'the provision of enhanced supervision as a contribution to the management of offenders who pose a significant risk to the public'. They cater for male and female prisoners who are assessed as 'very high' or 'high' risk, but in order to increase take-up APs also cater for female 'medium' risk offenders such as the appellant. Although APs also cater for people on bail or serving a community sentence, the majority of residents are there because of the conditions of their release on licence from prison. They have to abide by a curfew and a code of conduct and any breach of the conditions of their licence can result in recall to prison." *Coll, R. (on the application of) v Secretary of State for Justice* [2017] UKSC 40.

C

CANVASS OR SOLICIT. "There was no dispute, and there were no submissions, about the proper construction of the terms 'canvass' and 'solicit'. Both seem to me to require a positive act on the part of the covenantor to approach the named individuals with a view to persuading them or suggesting to them that they leave the employment of the covenantee and instead to work for, or with, the covenantor. It is clear as a matter of ordinary language that a person (A) does not canvass or solicit another person (B) merely because B approaches A and, as a result of that approach, A employs B. To 'canvass' or 'solicit', A must make the first move." *Rush Hair Ltd v Gibson-Forbes* [2016] EWHC 2589 (QB).

CASE LAW. See RETAINED CASE LAW; RETAINED DOMESTIC CASE LAW; RETAINED EU CASE LAW.

CHARTER OF FUNDAMENTAL RIGHTS. Stat. Def., "the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

CHEATING. "The principal issue on this appeal is whether a method of play called 'edge-sorting', which involves exploiting design irregularities on the backs of playing cards, results in cheating when playing Punto Banco, a variant of Baccarat. In Punto Banco, a single player plays against the casino or 'house' offering the game. The appellant, Mr Philip Ivey (hereafter Mr Ivey), a well-known professional gambler from the United States, considers that it is lawful for skilful players such as him, known as 'advantage players', to use methods of play such as this. He contends that edge-sorting ought to be known to the casino and the casino could protect itself against it. It follows that when he admittedly used edge-sorting he subjectively did not have any dishonest intention and his play cannot therefore have amounted to cheating. The respondent casino, known as Crockfords Club (hereafter 'Crockfords'), say that they did not know about edge-sorting, and that it altered the odds against them unfairly. . . . It is common ground that there was an implied term in the parties' contract not to cheat. The meaning of cheating for this purpose is to be determined in accordance with section 42 of the 2005 Act. In my judgment, this section provides that a party may cheat within the meaning of this section without dishonesty or intention to deceive: depending on the circumstances it may be enough that he simply interferes with the process of the game. On that basis, the fact that the appellant did not regard himself as cheating is not determinative.

There is no doubt that the actions of Mr Ivey and Ms Sun interfered with the process by which Crockfords played the game of Punto Banco with Mr Ivey. It is for the court to determine whether the interference was of such a quality as to constitute cheating.

In my judgment it had that quality for the reasons given above, which reflect the reasons given by judge. In particular the actions which Mr Ivey took or caused to be taken had a substantial effect on the odds in the game and Crockfords were not aware

of this at the relevant time. In these circumstances, no lower standard applied in this case because Mr Ivey was an advantage player who was in an adversarial position with the casino." *Ivey v Genting Casinos UK Ltd (t/a Crockfords Club)* [2016] EWCA Civ 1093.

COLLATERAL. "A matter is collateral if it is something that stands apart from the main issue. As such it will not be immediately relevant to the main issue and therefore evidence of the collateral matter will not generally be admissible in an inquiry into the main issue." *Appeal by Stated Case in the Cause (1) JS and (3) CS Against the Children's Reporter* [2016] ScotCS CSIH 74.

COMMUNICATION. Stat. Def., "in relation to a postal operator or postal service…, includes anything transmitted by a postal service", Investigatory Powers Act 2016 s.262(2).

CONCERNS. "In my opinion the word 'concerns' has been carefully chosen by the drafters to be wide enough to encompass matters which are incidental or ancillary to the determination of a person's entitlement. 'Concern' is defined in the Oxford dictionary as: 'to have relation or reference to; to refer to; relate to; to be about a connection or association with.'

This is the meaning that the drafter intended and is the ordinary or natural meaning. It does not lead to an absurdity, in fact quite the opposite as it is common sense that the tribunal determines incidental matters such as whether it is an in country or out of country appeal." *PW v Secretary of State for the Home Department* [2017] ScotCS CSOH 47.

CONCERT. "Orchestral concert". Stat. Def., Corporation Tax Act 2009 s.1217PA as inserted by the Finance Act 2016 Sch.8 para.1.

CONDUCT. "In my opinion, on a proper construction of section 6(4) the word 'conduct' has its ordinary meaning of behaviour. The expression is wide enough to include an omission to act in breach of an obligation or duty. It is very difficult to see why it should be given a more restrictive meaning, particularly since it is clear that a broad view is to be taken to the construction of section 6(4) (*BP Exploration Co Ltd v Chevron*, per Lord Hope at paragraph 31, Lord Clyde at paragraphs 66–67, Lord Millet at paragraph 97; *Dryburgh v Scotts Media Tax Ltd*, supra, Opinion of the Court at paragraphs 18–20). Resort to the mischief rule points in the same direction. The mischief the error provision was intended to address is broad enough to encompass error induced by a failure of the debtor to act in breach of an obligation or duty. A construction of 'conduct' which confined it to positive acts would fail to address part of the mischief. It would be very odd indeed if innocent action inducing error fell within the purview of the provision but reprehensible inaction in breach of duty did not. The equitable case for the latter circumstance being included within the scope of the mischief, and within the meaning of 'conduct', is as strong as the case for reprehensible action being included and stronger than the case for innocent action being included." *Heather Capital Ltd v Levy & McRae* [2016] ScotCS CSOH 107.

CONVERSION. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of

(i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild.

Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over-simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form-based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion.

Third, in relation to the argument that the conversion/rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in

its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion." *Hibbitt v Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin).

CROWN OF ACT OF STATE. See ACT OF STATE.

CULTURAL PROPERTY. Stat. Def., Cultural Property (Armed Conflicts) Act 2017 Sch.1 Art.1.

CURRENT. "The ordinary meaning of the word 'current' does not encompass 'recent' or 'latest'. Mr Malik does not submit to the contrary. 'Has current … leave' would appear to be referring to an existing state of affairs. He also accepts that the reference to completing a course 'within the applicant's last period of entry clearance, leave to enter or leave to remain', in the first of the two subsidiary criteria, provides a contrast with current entry clearance. At first blush it would appear that if his suggested interpretation of the word 'current' were right, it should have been used again for the purposes of consistency in subparagraph (i)." *Behary, R. (on the application of) v Secretary of State for the Home Department* [2016] EWCA Civ 702.

D

DAMAGE. "In my view Hickinbottom J. was right to conclude that the concept of 'damage' in article 2(2) of the Environmental Liability Directive, properly understood in its context, means a measurable deterioration in the existing state of the 'natural resource' or the 'natural resource service' in question. Both a measurable 'adverse change' in a 'natural resource' and a measurable 'impairment' of a 'natural resource service' involve a measurable deterioration to that 'natural resource' or 'natural resource service', as the case may be, from its 'baseline condition', as defined in article 2(14). Where the 'impairment of a natural resource service' is concerned, this concept of 'damage' applies, through the definition of 'natural resource services' in article 2(13), to any 'impairment' to 'the functions performed by a natural resource for the benefit of another natural resource or the public'. The concept of 'environmental damage' in article 2(1), where it concerns '(a) damage to protected species and natural habitats …' and '(b) "water damage"', imports and depends upon that concept of 'damage'. This, I believe, is the only interpretation of the concepts of 'damage' and 'environmental damage' compatible with the other relevant provisions of the Environmental Liability Directive." *Seiont, Gwyrfai and Llyfni Anglers' Society v Natural Resources Wales* [2016] EWCA Civ 797.

DEVOLVED AUTHORITY. Stat. Def., "'authority' means—

(a) the Scottish Ministers,

(b) the Welsh Ministers, or

(c) a Northern Ireland department" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

DIRECT EU LEGISLATION. STAT. DEF., "(a) any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as—

(i) it is not an exempt EU instrument (for which see section 14(1) and Schedule 6),

(ii) it is not an EU decision addressed only to a member State other than the United Kingdom, and

(iii) its effect is not reproduced in an enactment to which section 2(1) applies,

(b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as—

(i) it refers to, or contains adaptations of, anything falling within paragraph (a), and

(ii) its effect is not reproduced in an enactment to which section 2(1) applies, or

(c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day" (European Union (Withdrawal) Bill 2017–19, Clause 2).

DISHONESTY. "Dishonesty and want of integrity have long been treated as different (if overlapping) regulatory concepts. One can lack integrity without being dishonest, for example, see: *Bolton v Law Society* [1994] 1 WLR 512; [1994] 2 All ER

486; *Hoodless and Blackwell v Financial Services Authority* [2003] UKFTT FSM007; *SRA v Chan and Ali* (supra); *Scott v SRA* [2016] EWHC 1256 (Admin); *SRA v Wingate and Evans* [2016] EWHC 3455 (Admin); [2017] ACD 31; and *Newell-Austin v SRA* [2017] EWHC 411 (Admin); [2017] Med LR 194. There was no suggestion to the contrary before the Tribunal. . . . I proceed on the basis, both on the authorities and as a matter of principle, that, in the field of solicitors' regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing." *Williams v Solicitors Regulation Authority* [2017] EWHC 1478 (Admin).

DISPOSITION. "In some circumstances, the term 'disposition' may, as Lord Neuberger demonstrates, embrace destruction or extinction of an interest. In the present context, one might also pray in aid academic descriptions of the wrongful alienation of trust property (even if it did not override any beneficial interest in such property) as a 'misapplication of trust assets' (see *Snell's Equity* (33rd ed), paras 30-013, 30-050 and 30-067) and a 'disposition . . . in breach of trust' (see Swadling in Burrows, *English Private Law* (3rd ed), para 4.151). But the natural meaning of 'disposition' in the context of section 127 is in my view that it refers to a transfer by a disponor to a disponee of the relevant property (here the beneficial interest), not least when the section goes on to render any disposition 'void' unless the court otherwise orders." *Akers v Samba Financial Group (Rev 1)* [2017] UKSC 6.

DISSIPATION. "I was not addressed on the meaning of dissipation. The pursuer simply asserted that the defender had dissipated funds representing matrimonial property. There is no statutory definition of 'dissipation', which suggests its ordinary meaning 'to squander' or 'to waste' is to be applied. The phrase in which that word appears in section 10(6)(c) is 'destruction, dissipation or alienation of property'. Those other words ('destruction' or 'alienation') colour the meaning of 'dissipation'. In my view, section 10(6) is to enable account to be taken of an intentional or dissolute diminution, by one of these means, of the matrimonial commonwealth and constituting such diminution other than by way of ordinary or bona fides dealings. Applying its ordinary meaning, 'dissipation' is suggestive of a waste or loss of matrimonial funds which cannot be traced or which is not represented by a replacement asset. Excessive spending grossly out of proportion to the resources within the matrimonial commonwealth or monies lost by gambling might be examples of 'dissipation'.

[46] If that understanding is correct, 'dissipation' in section 15(6) is unlikely to include inter vivos intergenerational gifts or those made for the purposes of tax planning. What the whole evidence discloses is a person of wealth passing on some of that wealth, in a way intended to be tax efficient, to his children. Given the familial context, the usual presumption against donation does not apply but rather such a payment is presumptively a gift made *ex pietate* or out of a sense of natural obligation, such as that owed by a parent to a child: *Malcolm v Campbell* (1889) 17 R 255." *EP or G v GG* [2016] ScotCS CSOH 32.

DOMESTIC LAW. Stat. Def., European Union (Withdrawal) Bill 2017–19, Clause 14(1).

DRAFT. "Though initially it was suggested by the Applicant on paper that it was a factual error to describe a cheque drawn by the Halifax on its own account as a 'draft'

I do not accept that this was materially false: a cheque drawn on a branch suspense account by a building society is to be treated in every respect in a similar way to a cheque drawn by a bank upon its own funds. The latter describes a 'bankers draft'. That description was entirely appropriate for a cheque (or draft) such as that exhibited in the present case." *Coghlan v Bailey* [2017] EWHC 570 (QB).

DRILLING. "I first consider whether there is a 'natural' interpretation of the words 'commencement of drilling'. I find that there is and it is the physical penetration of the seabed, i.e. spudding. This is to be distinguished from preparations for drilling. Drilling is itself not a momentary process and so it is perfectly sensible to speak of when drilling starts, in the spudding sense, and when it stops. That is the sense in which one would define drilling the road or the drilling of one's teeth by a dentist. I further find that 'commencement' naturally means the beginning of drilling, not the beginning of preparations for drilling." *Vitol E&P Ltd v Africa Oil and Gas Corp* [2016] EWHC 1677 (Comm).

DRINK. "Soft drink". Stat. Def., Finance Act 2017 s.26.

DUE REGARD. "But I am equally wholly unpersuaded that there is in reality any material difference between the obligations to have regard and to have due regard. Merely to have regard in the sense that the existence of the statutory requirements is recognised is never likely to suffice, albeit much will turn on the nature of the matters to which regard must be had. In s.1C it is a specific need to reduce inequalities so that the defendant is obliged to show that that need is recognised and that what is proposed does not in his view at the very least cause an increase in such inequalities. All that 'due' adds in my view is a specific recognition that the effect of the decision on the specified matters must be properly taken into account. It could indeed be argued that 'due' does not strengthen but rather weakens in that it recognises that there may be circumstances in which regard is not needed. But it seems to me in any event that the argument was a barren one having regard to the nature of the obligation in s.1C." *Pharmaceutical Services Negotiating Committee, R. (on the application of) v Secretary of State for Health* [2017] EWHC 1147 (Admin).

E

EMPLOYEE. "I do not think that in ordinary language an individual such as Mr Arslan whose services are supplied to a solicitor's firm under a contract between the firm and the company which the individual owns and directs would naturally be described as an 'employee' of the firm, even if the firm has control over his work or exclusive control over his time for all or part of his working week." *Solicitors Regulation Authority (SRA) v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin).

ENACTMENT. "It is clear (for example from section 1 of the Interpretation Act and *Wakefield and District Light Railways Co v Wakefield Corporation* [1906] 2 KB 140, at 145), that the concept of an enactment, as used in section 17, is not limited to whole Acts, parts or even sections of an Act. Any provision, long or short, which achieves a distinct objective may be an enactment. In my view Mr Dowding's attempt to combine saving provisions with the provisions to which they are an exception or derogation as indivisible enactments is simply wrong in principle. To do so would deprive section 17(2) of much of its force. It applies to 'any reference' in one enactment to another enactment. A reference by way of saving or exception is in my view squarely within that framework." *John Lyon's Charity v London Sephardi Trust* [2017] EWCA Civ 846.

Stat. Def., "means an enactment whenever passed or made and includes—

(a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and

(e) except in section 2 or where there is otherwise a contrary intention, any retained direct EU legislation" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

ENVIRONMENT. "The definition of 'environment' is to be given a broad meaning: see *Venn*, and *Lesoochranarske Zoskupenie VLK v Ministerstvo Zivotneho Prostredia Slovenskej Republiky* (Case C-240/09) [2012] QB 606." *Dowley, R. (on the application of) v Secretary of State for Communities and Local Government* [2016] EWHC 2618 (Admin).

EQUITABLE COMPENSATION. See *Interactive Technology Corporation Ltd v Ferster* [2017] EWHC 217 (Ch).

ESTABLISHED PRESENCE. See CURRENT.

EU-DERIVED DOMESTIC LEGISLATION. Stat. Def., "means any enactment so far as—

(a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,

(b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,

(c) relating to anything—

(i) which falls within paragraph (a) or (b), or

(ii) to which section 3(1) or 4(1) applies, or

(d) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act 1972"—but note that the definition is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) (European Union (Withdrawal) Bill 2017–19, Clause 1).

EU DIRECTIVE. Stat. Def., "a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

EU ENTITY. Stat. Def., "an EU institution or any office, body or agency of the EU" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

EU LEGISLATION. See DIRECT EU LEGISLATION.

EU REFERENCE. Stat. Def., "means—

(a) any reference to the EU, an EU entity or a member State,

(b) any reference to an EU directive or any other EU law, or

(c) any other reference which relates to the EU" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

EU REGULATION. Stat. Def., "a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

EU TERTIARY LEGISLATION. Stat. Def., "means—

(a) any provision made under—

(i) an EU regulation,

(ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or

(iii) an EU directive,

by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or

(b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

EXIT DAY. Stat. Def., European Union (Withdrawal) Bill 2017–19, Clause 14.

EXONERATION. "Where property jointly owned by A and B is charged to secure the debts of B only, A is or may be entitled to a charge over B's share of the property to the extent that B's debts are paid out of A's share. This is known as the equity of exoneration. Although this label, and its origins in the protection given by equity to married women's property rights before the Married Women's Property Act 1882, lends an obscure, even archaic, air, it is best understood as part of the relief more generally given to sureties against the principal debtor. It is as much a feature of contemporary law as it was of equity in the 18th and 19th centuries." *Armstrong v Onyearu* [2017] EWCA Civ 268.

EXPRESSLY. "It is unnecessary for us to embark on a detailed examination of the reasoning of the sheriff or the sheriff principal and there is no need for any elaborate exposition of the word 'expressly'. Whatever precise meaning that word may have in different contexts, the intention of Parliament, in the present context, must have been to require something which drew the attention of the tenant to the fact that the term was to be for a period of less than six months. We accept that the provision does not require use of the actual words 'term of less than six months'. But we are satisfied that it is necessary to find some wording with equivalent effect stating that the duration of the agreement is for some explicit period which does not exceed six months or that occupancy is to come to an end at some point within six months. Such a provision would not preclude express reference to the possibility of a further agreement allowing occupancy to continue after that period." *Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

EXTENT. "The word 'extent' can bear many different meanings and shades of meaning, and is broad enough in abstract to cover scope or width of application, but context gives it greater precision. Here, the 'extent' to which reasonably incurred expenses are to be defrayed is more likely to cover amount alone, than to cover when the money should be paid. However, the words qualifying 'such extent', i.e. 'as is reasonable in all the circumstances', at least permit account to be taken of when the money is paid, or is to be paid, in judging whether defraying that amount is reasonable, even if it is not taken into account in judging whether the expenses were or are to be 'reasonably incurred'. Indeed, it is difficult in the end to see that this aspect of the cost of connection is meant to fall outside both aspects of 'reasonableness' in s19(1). Mr Herberg is right, though, that an expense 'reasonably incurred' may not be an expense which in its full extent is reasonably to be defrayed by the customer, for example where reinforcement works required as part of the connection also provide significant material benefits to other consumers, or if there were a significant delay in the connection being made." *UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

F

FEBRILE FIT. "A 'febrile fit' is a fit, convulsion or seizure experienced by a child with a fever. More often than not the underlying fever is caused by a benign viral illness and is self-limiting—in other words, it resolves itself without any long-term effects." *XYZ v Maidstone & Tunbridge Wells NHS Trust* [2016] EWHC 2687 (QB).

FILING. "The claim form in an application to quash a decision of a Minister must be filed at the Administrative Court, 8APD paragraphs 9.2 and 22.3. 'Filing' means delivering a document by post or otherwise to the court office, CPR 2.3(1). The opening days and hours of the court offices are specified in 2APD paragraph 2.1." *Croke v Secretary of State for Communities and Local Government* [2016] EWHC 2484 (Admin).

FIT AND PROPER PERSON. "There are no provisions, either in statute or case-law, limiting or defining the bases upon which a licensing authority may conclude that an applicant is not a 'fit and proper person' to hold a licence. Such decisions are, of course, subject to the usual controls on administrative action: taking account of relevant considerations and avoiding irrelevant considerations; perversity; Wednesbury unreasonableness and the like. Beyond those controls, the authority enjoys a wide measure of discretion. It is not a necessary prerequisite that an applicant should have been convicted of a criminal offence (*Coyle v Glasgow City Council* 2012 SLT 1018). A licensing authority has a broad discretion when exercising their judgment. They are entitled to place weight on the nature and cumulative impression of a series of circumstances (*McKay v Banff and Buchan Western Division Licensing Board* 1991 SLT 20 at page 24G-H; *Hughes v Hamilton District Council* 1991 SC 251). They are also entitled to expect the applicant to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he is not a fit and proper person. In this respect, there is a practical onus resting on the applicant (*Chief Constable of Strathclyde v North Lanarkshire Licensing Board* 2004 SC 304 at paragraph [23]; *McAllister v East Dunbartonshire Licensing Board* 1998 SC 748 at page 757G-H; *Calderwood v Renfrewshire Council* 2004 SC 691 at paragraph 18)." *Glasgow City Council v Bimendi* [2016] ScotCS CSIH 41.

FLIGHT. "The judge said that 'flight', for the purposes of section 76(1), is confined to 'journeys with aircraft passing over other property and the associated take-off and landing'. He therefore confined 'flight' in this context to lateral travel from one fixed point to another. He gave no justification or explanation for that limitation. I can see no justifiable basis for it. The statutory definition in section 105(1) of the CAA 1982 contains no such limitation unless it is to be found in the word 'journey'. The word 'journey', however, has no such usual limitation." *Peires v Bickerton's Aerodromes Ltd* [2017] EWCA Civ 273.

FLUFF. "The claims concern material known in the industry as 'fluff'. Put very simply, household rubbish (or black-bag waste) that goes to landfill is placed in cells

lined with a liner to protect the environment. The practice of landfill site operators is to sort the waste before it is first placed in a cell so that the layer on the base of the cell does not contain sharp or heavy objects which might puncture the liner. This layer, typically 2 metres deep, has come to be known as 'base fluff'. A similar practice is adopted on the sides of the cell as the cell is filled up, and this material has come to be known as 'side fluff'." *Veolia ES Landfill Ltd, R. (on the application of) v HM Revenue & Customs* [2016] EWHC 1880 (Admin).

FRAGMENTED. "In the first place, that seems the better reading as a matter of ordinary English. That is not only because of the use of the plural but also because the word 'fragmented' naturally connotes a whole which has been broken into parts and thus necessarily implies plurality." *Lidl Ltd v Central Arbitration Committee* [2017] EWCA Civ 328.

FUGITIVE. "'Fugitive' is not a term used in the statutory scheme, but a common law principle that, in order to resist extradition on the basis of passage of time, an accused person cannot rely upon delay which he himself has caused, as developed in particular in *Kakis v Government of the Republic of Cyprus* [1973] 1 WLR 779 and *Gomes and Goodyer v Government of the Republic of Trinidad and Tobago* [2009] UKHL 21. A person has fugitive status [if] he has knowingly placed himself beyond the reach of legal process (*Wisniewski* at [59]). Before this principle applies, a person's status as a fugitive must be established to the criminal standard (*Gomes and Goodyer* at [27])." *Stryjecki v District Court in Lublin, Poland* [2016] EWHC 3309 (Admin).

G

GABBRO. "Gabbro is a dense, coarse-grained igneous rock." *Community Against Dean, R. (on the application of) v Shire Oak Quarries Ltd* [2017] EWHC 74 (Admin).

GROUP. "Where it is in error is firstly in assuming that because an expression must be read eiusdem generis in one context, that defines its meaning for other contexts in which there is no requirement to read the same expression 'eiusdem generis' with any other words. The word 'group' is a common English word, capable of applicability in a wide range of circumstances. Where it is qualified by the adjectival use of 'patient' then the group has plainly to consist of those who are identified as 'patients' in some relevant respect, but otherwise the breadth of the word 'group' remains. The purpose of the eiusdem generis principle is to limit what would otherwise be recognised as the generality of the wording in a particular context. It cannot be used to define the meaning of the expression where there are no words which suggest that the meaning should be limited in that way. Consider the example of the expression: 'cats, dogs and other animals'. In this expression, 'other animals' has to be understood in the context of 'cats' and 'dogs'. 'Other animals' will thus be domestic animals. Remove the words 'cats, dogs and other' and the word is simply 'animals'. Absent specific context, there would be no warrant in any statute or instrument which referred to the composite expression in one place, and the unqualified word 'animals' in another, for reading the latter as limited to domestic animals. It would retain the generality of meaning which it was the very purpose of the word 'other' to restrict by reference to specific examples in the list of which it formed part." *Community Pharmacies (UK) Ltd, R. (on the application of) v National Health Service Litigation Authority* [2016] EWHC 1595 (QB).

H

HARASSMENT. "Section 7 does not define 'harassment'. It merely provides guidance as to the interpretation of the operative provisions. Further guidance has been provided by the Supreme Court in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'" *Barkhuysen v Hamilton* [2016] EWHC 2858 (QB).

"The use of the words 'alarm and/or distress' in Mr Hudson's submission is a reflection of s 7(2) of the 1997 Act, which provides that 'references to harassing a person include alarming the person or causing the person distress'. This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The Supreme Court gave further guidance in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'" *Hourani v Thomson* [2017] EWHC 432 (QB).

HOMOLOGATION. "The classic exposition of the doctrine of homologation is to be found in Bell's Principles 10th edition at paragraph 27. 'Homologation … is an act … approbatory of a preceding engagement, which in itself is defective or informal … either confirming or adopting it as binding. It may be expressed, or inferred from circumstances. It must be absolute, and not compulsory, nor proceeding on error or fraud, and unequivocally referable to the engagement; and must imply assent to it, with full knowledge of its extent and of all the relative interests of the homologator.' The effect of homologation is to remove the right to resile from the informal agreement. The actings must be carried out in the full knowledge of all matters relevant to the homologator's rights and interests. Most obviously this includes knowledge of the right to resile." *Khosrowpour v Mackay* [2016] ScotCS CSIH 50.

I

IDENTIFIES. "This appeal turns on the meaning of 'identifies' and on the meaning of the notice to which that word is being applied. Both are questions of law, although the answers may be informed by background facts. The essential question before us is what background facts may be relevant for this purpose. In my opinion, a person is identified in a notice under section 393 if he is identified by name or by a synonym for him, such as his office or job title. In the case of a synonym, it must be apparent from the notice itself that it could apply to only one person and that person must be identifiable from information which is either in the notice or publicly available elsewhere. However, [to] resort to information publicly available elsewhere is permissible only where it enables one to interpret (as opposed to supplementing) the language of the notice. Thus a reference to the 'chief executive' of the X Company may be elucidated by discovering from the company's website who that is. And a reference to 'CIO London Management' would be a relevant synonym if it could be shown to refer to one person and that person so described was identifiable from publicly available information. What is not permissible is to resort to additional facts about the person so described so that if those facts and the notice are placed side by side it becomes apparent that they refer to the same person." *Financial Conduct Authority v Macris* [2017] UKSC 19.

IN PARTICULAR. "Ms Anderson submitted that 'in particular' should bear its natural and ordinary meaning, but in my view that submission does not assist. There are two natural and ordinary meanings of the term. Similar problems arise with prepositions such as 'including'. In my judgment, the real question which always arises in this sort of case is as to how the term at issue should be construed in its particular context." *JM (Zimbabwe), R. (on the application of) v Secretary of State for the Home Department* [2016] EWHC 1773 (Admin).

INTEGRITY. See DISHONESTY.

INTENDS. See PROPOSES.

INTERCEPT. [*at end of definition, add:*] Investigatory Powers Act 2016 s.4.

INTRINSIC. "My difficulty is with the word 'intrinsic' itself and what it means in this context. It is possible to describe things or people as having certain intrinsic qualities or characteristics, but it is a more elusive term when used as a descriptor of a relationship between two transactions. Take Lord Hobhouse's example of a pension scheme mis-sold to a group of investors in the same venture by use of the same document. On one interpretation of the Court of Appeal's formula it could be said that there was no 'intrinsic' relationship between the matters giving rise to the investors' claims, because their only connection was an 'extrinsic' relationship with the third party who sold the pension to all of them. If so, the addition of sub-clauses (iii) and (iv) will not have helped to resolve the point of difference between Lords Hoffmann and Hobhouse; and if Lord Hoffmann's view is to be preferred, there would be no

right to aggregate in such a case. It is hard to suppose that the Law Society so intended when it introduced the new sub-clauses." *AIG Europe Ltd v Woodman* [2017] UKSC 18.

L

LAND TRANSACTION. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 s.3.

LEGAL PROCEEDINGS. "The preliminary issue here is the true interpretation of the words 'legal proceedings' in paragraph 10 of Schedule 7 to the DPA (set out in the Appendix to this judgment). In my judgment, these words refer to legal proceedings in any part of the UK. Parliament has not expressly limited the words 'legal proceedings' to proceedings in the UK. But in general it is presumed that Parliament does not intend to legislate for events which occur outside the territory of the relevant parts of the United Kingdom. That presumption is reinforced by the fact that, in creating the Legal Professional Privilege Exception, Parliament was exercising the member state option in Article 13(1)(g) of the Directive. It could, therefore, legislate only for measures to safeguard 'the rights and freedoms of others'. Privilege is a fundamental human right (see *R. (o/a Morgan Grenfell Ltd v Special Commissioners of Income Tax* [2003] 1 AC 563). In the context of a member state option, those rights must be the rights recognised by the relevant member state under its own law. So, when paragraph 10 refers to legal professional privilege which may be recognised in legal proceedings, it means proceedings in any part of the UK. That is the only form of privilege which the domestic rules of the law of any part of the UK recognise." *Dawson-Damer v Taylor Wessing LLP* [2017] EWCA Civ 74.

LESS FAVOURABLE TREATMENT. "First, 'less favourable treatment' requires no more than the identification by the court of some denial of an advantage, benefit or choice which was or would have been afforded to the comparator. It is a concept separate from that of impact or damaging consequences. For example, the denial of a reference for the purposes of future employment would qualify, whether or not that reference would have been helpful. To my mind, the clearest analysis of these concepts is to be found in the Opinion of Lord Hoffmann in *Chief Constable of West Yorkshire Police v Khan* [2001] 1 WLR 1947, paragraphs 51–53 (but see also Shamoon at paragraphs 34–35).

Secondly, although there has been a tendency in some places to equate 'less favourable treatment' with that of 'detriment', they are conceptually distinct (see Lord Hoffmann in Khan, paragraph 53). That said, as Lord Hoffmann continues: 'But, bearing in mind that the employment tribunal has jurisdiction to award compensation for [there is a typographical error in the Law Report] injury to feelings, the courts have given "detriment" a wide meaning. In *Ministry of Defence v Jeremiah* [1980] QB 87, 104 Brightman LJ said that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".' [Brightman LJ's dictum was also approved by the House of Lords in Shamoon]." *Interim Executive Board of X School v Chief Inspector of Education, Children's Services and Skills* [2016] EWHC 2813 (Admin).

LIQUIDATED PECUNIARY CLAIM. For different opinions on the meaning of this term in s.29 of the Limitation Act 1980 see *Creggy v Barnett* [2016] EWCA Civ 1004.

LOAN. "Peer-to-peer loan". Stat. Def., Income Tax Act 2007 s.412I as inserted by the Finance Act 2016 s.32.

M

MANIFESTLY WITHOUT REASONABLE FOUNDATION. "The expression 'manifestly without reasonable foundation' derives from decisions in Strasbourg where the European Court of Human Rights ('ECtHR') has considered that a wide margin of appreciation should be allowed to member states when it comes to general measures of political, economic or social strategy. In such an area the ECtHR has stated it will respect the member state's policy unless it is manifestly without reasonable foundation—as seen for example in respect of welfare benefits in Stec supra at [52]: 'A wide margin is usually allowed to the state under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the court will generally respect the legislature's policy choice unless it is "manifestly" without reasonable foundation.'" *Hunter v Student Awards Agency for Scotland* [2016] ScotCS CSOH 71.

MARSHALLING. "The principle of marshalling is an equitable principle. In its classic form it applies where two creditors are owed debts by the same debtor, one of whom can enforce his claim against more than one security but the other can resort to only one. In those circumstances the principle gives the second creditor a right in equity to require that the first creditor be treated as having satisfied himself as far as possible out of the security to which the latter has no claim." *McLean v Trustees of the Bankruptcy Estate of Dent* [2016] EWHC 2650 (Ch).

MINISTER OF THE CROWN. Stat. Def., "has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty's Revenue and Customs" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

MISSING. Stat. Def. (in context of missing persons), Guardianship (Missing Persons) Act 2017 s.1.

MODIFY. Stat. Def., "includes amend, repeal or revoke (and related expressions are to be read accordingly)" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)); and note that, interestingly, "amend" is not defined so as to include "modify".

N

NE BIS IN IDEM. "A precise formulation of the actual ambit of the principle of ne bis in idem is elusive. Its general import is, however, clear enough. It is a reflection of the well understood rule against double jeopardy; and, in the context of its application to Member States under Article 54 of the Convention implementing the Schengen Agreement, is also a reflection of the prohibition of measures which might prejudice the hallowed principle of freedom of movement." *A v Director of Public Prosecution* [2016] EWCA Crim 1393.

NECESSARY. "I agree with Mr Cragg that the approach adopted to 'necessary' in the statutory context with which Lord Griffiths was concerned is equally applicable to 'necessary' as found in Regulation 12 of the Complaints and Misconduct Regulations. It has a high threshold, in the sense that it means more than 'useful' or 'expedient'." *Miah, R. (on the application of) v Independent Police Complaints Commission* [2016] EWHC 3310 (Admin).

"However, it should be emphasised that the underlying concept in section 24(5) is that of necessity. This cannot be envisaged as a synonym for 'desirable' or 'convenient'. For present purposes the issue may be formulated thus: should this Court, in the exercise of its review function, conclude that an arrest was necessary to allow the prompt and effective investigation of this complaint?" *R. (on the application of TL) v Surrey Police* [2017] EWHC 129 (Admin).

NON-TRIVIAL. "I am not troubled by the use of the words 'non-trivial' in paragraph 12(1)(f) because it is clear that the meaning of 'non-trivial' is not confined to that which is only just not trivial. As I said in argument, it can also mean 'significant', which is the meaning to be preferred because it chimes with the meaning of 'misconduct' in the Accountancy Scheme. Accordingly I reject Mr Drabble's submission that paragraph 12(1)(f) is to be given a meaning of anything but trivial, i.e. as including the not quite trivial. Such a meaning would be out of context and therefore inconsistent with the principles of interpretation which courts apply. The word 'non-trivial' must be given a contextual meaning consistent with the term 'misconduct' which sub-paragraph (f) explicates." *Baker Tilly UK Audit LLP v Financial Reporting Council* [2017] EWCA Civ 406.

NORTHERN IRELAND DEVOLVED AUTHORITY. Stat. Def., "the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

NOTHING ELSE WILL DO. "Since the phrase 'nothing else will do' was first coined in the context of public law orders for the protection of children by the Supreme Court in *Re B*, judges in both the High Court and Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child as described by Baroness Hale in paragraph 215 of her judgment:

'We all agree that an order compulsorily severing the ties between a child and her parents can only be made if "justified by an overriding requirement pertaining to the child's best interests". In other words, the test is one of necessity. Nothing else will do.'

The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s.1). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons (see *Re B-S* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 715 and other cases).

69.Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase 'nothing else will do' can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that outcome that falls to be evaluated against the yardstick of necessity, proportionality and 'nothing else will do'." *W (A Child), Re* [2016] EWCA Civ 793.

NOTICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'." *UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

O

OCCUPATION. See ACTUAL OCCUPATION.

OFF THE RECORD. "'Off the record' is an idiom and like many idioms can bear different shades of meaning. It may, for example, be intended to mean 'strictly confidential' or it may be intended to mean 'not to be directly quoted or attributed'. The judge found that Mr Hartnett understood it to mean that the interview was to be a 'background briefing', intended to influence the journalists' views and what they wrote about matters affecting HMRC but not to be published. There has been no appeal against that finding, but nothing in my view turns on what precisely Mr Hartnett intended." *Ingenious Media Holdings Plc & R. (on the application of) v Revenue and Customs* [2016] UKSC 54.

OPERATIONAL. "I am satisfied that, on an ordinary construction of the contract, by engaging to supply a 'fully operational cofferdam' the pursuer did not undertake that it could be used in all weather conditions however severe. The defender's suggested construction is not the natural and ordinary meaning of the words used. In my opinion it also defies common sense. It was obvious that construction work at sea would be likely to be unsafe in some severe weather conditions." *Acotec UK Ltd v McLaughlin & Harvey Ltd* [2016] ScotCS CSOH 134.

OUTSTANDING. "Outstanding is an ordinary English word with a readily understood meaning and was doubtless chosen by Parliament to identify the exceptional nature of the benefit that must exist. It may be useful for this purpose to consider whether the benefit to the employer exceeded what would normally be expected to result from the work for which the employee was paid so long as one bears in mind that the focus of s.40(1) is on the benefit to the employer and not on the degree of inventiveness of the employee.... What I think this demonstrates is that 'outstanding' is a relative concept which requires to be measured against the relevant factors in each case. In relation to a large conglomerate like the Unilever Group, turnover and profitability will be relevant factors to consider as in every other case but they will not be the only relevant factors as s.40(1) makes clear." *Shanks v Unilever Plc* [2017] EWCA Civ 2.

P

PACKETS. "By the priority date mobile networks were digital. At least some types of information sent via the networks were in 'packets'—that is groups of bits. In general a packet may comprise payload data (that is content which the transmitting entity is to send to a receiving entity) and control data (that is data which enables the transmitting entity, receiving entity and mobile network to operate efficiently and process the packets). The control data is usually included in a packet as a header." *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWCA Civ 266.

PERSISTENTLY. "The meaning of the word 'persistently', as used in paragraph 3.1 of Practice Direction 3C, was considered by Mr Edward Bartley Jones QC, sitting as a Deputy High Court Judge, in *Courtman v Ludlam* [2009] EWHC 2067 (Ch). He concluded that 'persistence' requires at least three wholly unmeritorious applications. . . . It seems to me, however, that Mr Bartley Jones was right to take the view that an ECRO cannot be made unless there have, overall, been at least three totally without merit claims or applications. Had it been intended that an ECRO should be possible where there had been no more than two unmeritorious claims or applications, provided that they had been spread across more than one set of proceedings, the draftsman could have said so in terms. The Practice Direction is not so framed, but instead uses the word 'persistently'. Mr Boardman is in effect submitting that a person can be said to have issued claims or applications 'persistently' if he has made just one application in each of two sets of proceedings. In my view, however, such a person would not naturally be described as issuing claims or applications 'persistently', and the point is reinforced by the contrast with the '2 or more' found in paragraph 2.1 of the Practice Direction." *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch).

PERSON. "Ms Hewitt sought to resist that clear conclusion. She submitted that the Coroner is not a 'person' for the purposes of Regulation 18(1) of the 1996 Regulations. I do not accept that submission. In my view, the natural meaning of the word 'person' includes the Coroner. In an appropriate context, that word can include a judge or other judicial office holder. For example, in the context of divorce proceedings, it was held that the words 'any person', in section 10 of the Matrimonial Causes Act 1950, 'clearly include the trial judge': see *Middlebrook v Middlebrook* [1964] P 262, at 264 (Wrangham J). I see no reason to take a different view in the case of a coroner." *Secretary of State, R. (on the application of) v HM Senior Coroner for Norfolk* [2016] EWHC 2279 (Admin).

"By s.5 and Schedule 1 of the Interpretation Act 1978, 'person' includes 'a body of persons corporate or unincorporated', and so a local authority." *R. v AB* [2017] EWCA Crim 534.

POINTE GOURDE RULE. "The appeal raises questions concerning the so-called Pointe Gourde rule (*Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of*

Crown Lands [1947] AC 565), or 'no-scheme' rule: that is, the rule that compensation for compulsory acquisition is to be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority. The law is to be found in the Land Compensation Act 1961 as explained and expanded by judicial interpretation. The particular issue concerns the relationship between the general provisions for the disregard of the scheme, and the more specific provisions relating to planning assumptions. 9. The rule has given rise to substantial controversy and difficulty in practice. In *Waters v Welsh Development Agency* [2004] 1 WLR 1304; [2004] UKHL 19, para 2 ('Waters'), Lord Nicholls of Birkenhead spoke of the law as 'fraught with complexity and obscurity'. In a report in 2003 the Law Commission conducted a detailed review of the history of the rule and the relevant jurisprudence, and made recommendations for the replacement of the existing rules by a comprehensive statutory code (Towards a Compulsory Purchase Code (1) Compensation Law Com No 286 (Cm 6071)). Since that report aspects of the rule have been subject to authoritative exposition by the House of Lords in Waters itself, and more recently in *Transport for London v Spirerose Ltd* [2009] 1 WLR 1797; [2009] UKHL 44 ('Spirerose'). 10. Although the Law Commission's recommendations for a complete new code were not adopted by government, limited amendments to the 1961 Act in line with their recommendations were made by the Localism Act 2011 section 232 (relating to planning assumptions). Further proposed amendments, dealing with the no-scheme principle more generally, are currently before Parliament in the Neighbourhood Planning Bill 2016–17. The purpose of the latter is said to be that of 'clarify[ing] the principles and assumptions for the "no-scheme world", taking into account the case law and judicial comment' (Explanatory Notes para 70). The present appeal falls to be decided by reference to the 1961 Act as it stood before the 2011 amendments. 11. Section 5 rule 2 established the general principle that the value of land is taken to be 'the amount which the land if sold in the open market by a willing seller might be expected to realise'. In applying this general principle, it is necessary for present purposes to take account of two other groups of provisions, relating first to 'disregards' of actual or prospective development (section 6 and Schedule 1), and secondly to 'planning assumptions' (sections 14–16).... It is in any event well-established that the application of the Pointe Gourde rule itself may result in changes to the assumed planning status of the subject land. Thus in *Melwood Units Pty Ltd v Main Roads Comr* [1979] AC 426, where land was acquired for an expressway, the Privy Council accepted that compensation should reflect the fact that but for the expressway project permission would have been obtained to develop the whole area for a drive-in shopping centre (p 433). That case, although decided under a different statutory code, has long been accepted as authoritative in this jurisdiction. It was cited without criticism in Spirerose (see paras 110ff per Lord Collins). Nor is there anything in section 6 to indicate that a more restrictive approach should be applied under the statutory disregards. In saying that the two stages should not be 'elided' (para 19 above), the tribunal as I understand them were doing no more than emphasising the difference between the statutory tests. 40. It has also long been accepted that application of the general law may produce a more favourable result for the claimant than the statutory planning assumptions. A striking illustration noted by the Law Commission (loc cit p 206–7) is provided by the two Jelson cases, relating to the same strip of land acquired for a road: *Jelson Ltd v Minister of Housing and Local Government* [1970] 1 QB 243, *Jelson Ltd v Blaby District Council* [1977] 1 WLR

1020. The refusal in the first case of a section 17 certificate for residential development, was held in the second not to prevent the tribunal taking account of the prospect of residential development under the Pointe Gourde rule (or section 9 of the 1961 Act). The difference lay in the criteria to be applied. Under section 17 attention was directed at the position as at the date of the deemed notice to treat, by which time development on either side of the strip had made further development impossible. Under the Pointe Gourde rule it was possible to look at the matter more broadly. Again this decision was cited without criticism in Spirerose (paras 105ff per Lord Collins).... The Upper Tribunal's decision in the present case is a powerful illustration of the potential complexities generated by the 1961 Act in its unamended form. It is to be hoped that the amendments currently before Parliament will be approved, and that taken with the 2011 amendments they will have their desired effect of simplifying the exercise for the future." *Homes and Communities Agency v JS Bloor (Wilmslow) Ltd* [2017] UKSC 12.

PORNOGRAPHIC MATERIAL. Stat. Def., Digital Economy Act 2017 s.15. For "extreme pornographic material" see Digital Economy Act 2017 s.22. See PORNOGRAPHY.

POSSESSION. Stat. Def., "possession means exclusive occupation." Neighbourhood Planning Act 2017 s.30.

PREFERENCE. "Although section 166A was only recently added, the statutory expression 'reasonable preference' in this context is not a new one. It is agreed between counsel and appears to be well established that the word 'preference' must be read and understood in the sense of priority. There is now a considerable and still-growing body of authority in this field. An early case was *R. v Wolverhampton MBC ex parte Watters* (1997) 29 HLR 931. There, the claimant was in a category of person who was entitled to reasonable preference under the legislation then in force, but she had significant rent arrears which had the effect under the housing authority's policy that she would not be admitted to their housing waiting list. It was argued on that claimant's behalf that '... because Parliament have ordained that reasonable preference is to be given, a council cannot treat it as reasonable not to grant any preference. Otherwise [the then-relevant section] would be otiose.' (See in the judgment of Leggatt LJ at page 935.)" *Woolfe, R. (on the application of) v London Borough of Islington* [2016] EWHC 1907 (Admin).

PRIMARY LEGISLATION. Stat. Def., "means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

PROFESSIONAL STANDARDS. Stat. Def., Children and Social Work Act 2017 s.63.

PROPERTY. "15. As to what constitutes 'property', this is always 'heavily dependent on context...—something can be "proprietary" in one sense while also being non-proprietary in another sense': M Conaglen, 'Thinking about proprietary remedies for breach of confidence' (2008) *Intellectual Property Quarterly* 82, 89, referring to R Nolan, *Equitable Property* (2006) 122 LQR 232, 256–257. As the Chancellor noted (para 62), there is a school of thought (which can be dated to FW Maitland, *Equity—a Course of Lectures* (1936)) which analyses the equitable interests

created by a common law trust not as proprietary, but as personal or 'obligational', even as against third parties. The issue 'whether trusts are properly seen as part of the law of property or as an aspect of the law of obligations' is described by Swadling in Burrows, *English Private Law* (3rd ed) (2013) para 4.140 as a 'difficult question'; see also Burrows, *The Law of Restitution*, (3rd ed) (2011), pp 191–193, Nolan, *Equitable Property* (2006) 122 LQR 232. Supporters of a personal analysis include B McFarlane, *The Structure of Property Law* (2008); see also Watt, *The Proprietary Effect of a Chattel Lease* (2003) Conveyancer and Property Lawyer 61. A recent discussion of the pros and cons of each analysis appears by P Jaffey in *Explaining the Trust* (2015) 131 LQR 377. Jaffey concludes that, although a trust involves personal rights against the trustee, only a proprietary analysis explains satisfactorily those aspects which concern the beneficiary's position vis-à-vis third parties, such as the trustee's creditors and recipients of unauthorised transfers of trust property." *Akers v Samba Financial Group (Rev 1)* [2017] UKSC 6.

PROPOSES. "First, in the context of paragraph 26, 'proposes' and 'intends' are, in my judgment, synonyms. While paragraph 26(1) requires a person who proposes to make an appointment to give written notice to the persons there specified, paragraph 26(2) (as amended by the Deregulation Act 2015 with effect from 1 October 2015) refers to such person as '[a] person who gives notice of intention to appoint under sub-paragraph (1)'. The same form of words is used in paragraph 27(1), while the heading to paragraphs 26–28 is 'Notice of intention to appoint'. The judge dismissed these references as 'simply shorthand references to a paragraph 26 notice'. While true, that does not explain why the notice is repeatedly described as a notice of intention, if the word 'proposes' meant something different from 'intends'. In my view, the natural reading of these provisions is that a single meaning was intended. This is certainly how the framers of the relevant Insolvency Rules and prescribed forms understood the paragraphs. Second, I have difficulty in seeing that, either as a matter of ordinary language or in the context of paragraph 26, there is a significant difference in the meaning of a person proposing to do something and a person intending to do that thing." *JCAM Commercial Real Estate Property XV Ltd v Davis Haulage Ltd* [2017] EWCA Civ 267.

PROPRIETARY. See PROPERTY.

PUBLIC AUTHORITY. Stat. Def., "References in this Act (however expressed) to a public authority in the United Kingdom include references to a public authority in any part of the United Kingdom" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)); note the doubt over whether the intention is to include public authorities within each part of the UK (including, for example, local authorities) or whether it is only meant to include authorities of each part, covering the devolved administrations.

Q

QUASH. "In my judgment these submissions on the construction of the statute are unsustainable. Mr Banner's argument on the meaning of 'quash' founders on the long accepted rule—acknowledged by Sir Clive Lewis ('all legal effect')—that the effect of an order to quash, certiorari in the old language, was to render the instrument in question as if it had never been. If only the confirmed CPO were quashed, leaving the made CPO, the latter would still have legal effects: appeal rights, and the Secretary of State's duty to hold a public inquiry (s.13A of the 1981 Act). Mr Banner was driven to submit that only the substantive legal effect of the CPO—that is, the land's acquisition—was the target of a quashing order under s.24. But as soon as such niceties arise, they are refuted by the plain riposte that if Parliament had intended such distinctions, it would have said so. Mr Harris' position fares no better. It is not possible to construe the term 'compulsory purchase order' as it appears in s.24(2) as referring only to the CPO after confirmation and publication. It bears the meaning (by cross-reference from s.7) given by s.2. Reading s.2(1) and (2) together demonstrates, conspicuously in my view, that the term is intended to refer compendiously to the CPO as made and confirmed. The fact that the CPO is only 'operative' after publication of its confirmation does not imply, in light of s.2, that the instrument in its earlier stages is not under the statute a CPO at all. As my Lord David Richards LJ pointed out in the course of argument, the attributes of authorisation and confirmation of the CPO are treated as different concepts in s.2(2). The CPO is, as it were throughout its incarnation, recognised as the source of authority for the land's acquisition notwithstanding that its authority does not bite until after publication. 20. In short, 'compulsory purchase order' means the instrument so called from first to last. If the legislature had intended to allow for relief going only to its confirmation, it would have so provided." *Grafton Group (UK) Plc v Secretary of State for Transport* [2016] EWCA Civ 561.

R

REAL PROSPECT OF SUCCESS. "The effect of these new sections is to bring in a time limit within which judicial review of administrative decisions may be brought before the court and provides that the petitioner must obtain the permission of the court to proceed. The court may only grant permission if it is satisfied that the petitioner has a sufficient interest in the subject matter and it has a real prospect of success.... I agree with Lady Wolffe that the language is clear. She referred to the observations of Lord Woolf in *Swain v Hillman* [2001] 1 All ER 91 (at 92) considering a similar test in the English Civil Procedure Rules. He said the words do not need amplification; they speak for themselves (paragraph 37 of *Ocheimhan*). There is a danger in my opinion in over analysing the clear words of a statute. Having considered the matter I do not think I can usefully add much to the debate by conducting my own review of authority. [16] My own conclusion is that the language of the test directs the court to the prospects of success rather than whether the case is stateable or arguable. That is important. Many things are arguable; the ingenuity of counsel knows no bounds. Focussing on arguability may inhibit the court in addressing the mischief that section 27B(2)(b) is designed to address; the prevention of unmeritorious claims proceeding (see Lady Wolffe in *Ocheimhan* at paragraph 32). In the immigration context, for example, the infelicitous use of a phrase or word in a decision letter or determination may give rise to an argument that there has been an error of law. But it may have no real prospect of success because it is clear from a reading of the offending word or words in context that there is no error. [17] The word 'real' simply means genuine rather than fanciful or speculative. It is not a high standard but the court must be satisfied that there is some prospect of success." *Fei (AP), Re Judicial Review* [2016] ScotCS CSOH 28.

REASONABLE TIME. "The expression 'reasonable time' is one which takes its meaning from its context and requires to be qualified, in my view, by the words 'in the circumstances'." *MacKie, Re Judicial Review* [2016] ScotCS CSOH 125.

REBUILD. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of (i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to

be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild. Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion. Third, in relation to the argument that the conversion/ rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion." *Hibbitt v Secretary of State for Communities & Local Government* [2016] EWHC 2853 (Admin).

RECOGNISE. "The word 'recognise' in the consent order and standard 10(e) is highly ambiguous. The *Oxford English Dictionary* supplies the more usual idiomatic

meaning of the verb as 'to acknowledge, consider, or accept (a person or thing) as or to be something'. However, it also supplies the more legalistic meaning, namely 'to accept the authority, validity, or legitimacy of; esp. to accept the claim or title of (a person or group of people) to be valid or true'. When a lawyer talks about someone 'recognising' a foreign judgment he means accepting that judgment as valid, binding and enforceable against that person. This is certainly the sense in which recognition of foreign judgments is used at common law. It is the sense in which the concept is used in the Civil Jurisdiction and Judgments Act 1982, as well as in the original and revised Brussels Regulations (Nos. 44/2001 and 1215/2012) and in the original and revised Brussels II Regulations (Nos. 1347/2000 and 2201/2003). It is the sense in which Sir James Munby P considered an informal Indian adoption in the very recent case of *Re N* [2016] EWHC 3085 (Fam). When he says at [149] 'English law recognises N's Indian adoption by the applicant in October 2011' he does not mean that English law merely has regard to the Indian adoption. He means that the court accepts the adoption as valid and effective to alter N's legal status." *Mandic-Bozic, R. (on the application of) v British Association for Counselling and Psychotherapy* [2016] EWHC 3134 (Admin).

RECOVER. "'Recover' suggested, I agree, that the expenditure had taken place. The *Oxford English Dictionary*, over several pages, revealed that the flexibilities of the English language tended somewhat in his favour, but without being conclusive. 'Recover' has also been used to mean 'obtaining … judgment' making a sum or debt payable; *Morris v Duncan* [1899] 1 QB 4, to which Mr Gordon referred me. More importantly: was this heading of any weight? *Bennion on Statutory Interpretation* 6th ed at section 256 said that the heading to a section may be considered, but account had to be taken of the fact 'that its function is merely to serve as a brief, and therefore possibly inaccurate, guide to the content of the section.' So the heading helps Mr Herberg, but not much. The limitations of reliance on headings were illustrated by the use of 'recovery of charges' in the heading to the repealed s18, which applied to pre-payment meters." *UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

REFOULEMENT. "The expression 'refoulement' refers to a principle which condemns the rendering of a victim of persecution to his or her persecutor. Generally, the persecutor in question is a state actor. The principle that a person should not be refouled is a fundamental tenet of international law relating to refugees which protects them from being returned or expelled to places where their lives or freedoms may be threatened." *Ibrahimi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin).

REFURBISHMENT. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 Sch.14 para.9(1)(h).

REGARD. See DUE REGARD.

REGULARLY. "This case is all about the meaning of the word 'regularly' when describing the attendance of a child at school. Under section 444(1) of the Education Act 1996, if a child of compulsory school age 'fails to attend regularly' at the school where he is a registered pupil, his parent is guilty of an offence. There are at least three possible meanings of 'regularly' in that provision: (a) evenly spaced, as in 'he attends Church regularly every Sunday'; (b) sufficiently often, as in 'he attends Church regularly, almost every week'; or (c) in accordance with the rules, as in 'he attends Church when he is required to do so'. When does a pupil fail to attend school

regularly? Is it sufficient if she turns up regularly every Wednesday, or if she attends over 90% of the days when she is required to do so, or does she have to attend on every day when she is required to do so, unless she has permission to be absent or some other recognised excuse? . . . In accordance with the rules 42. All the reasons why 'sufficiently frequently' cannot be right also point towards this being the correct interpretation. The Divisional Court was clearly worried about the consequence that a single missed attendance without leave or unavoidable cause could lead to criminal liability. However, there are several answers to this . . . This interpretation is also consistent with the provision in section 444(3)(a) and (9) that a child is not to be taken to have failed to attend regularly if he is absent with the leave of a person authorised by the governing body or proprietor of the school to give it. Unlike sickness or unavoidable cause, leave is not a defence. It is part of the definition of the offence. Your child is required to attend in accordance with the normal rules laid down by the school authorities for attendance but the school can make an exception in your case. As noted above, it is also consistent with section 444(3)(b).

47. There is another pointer in the link between the parent's obligation in section 7, to cause the child to receive 'full-time' education, and the offence committed under section 444(1), if the child fails to attend school regularly. 'Full-time' indicates for the whole of the time when education is being offered to children like the child in question. . . . I conclude, therefore, that in section 444(1) of the Education Act 1996, 'regularly' means 'in accordance with the rules prescribed by the school'. I would therefore make a declaration to that effect. To the extent that earlier cases, in particular *Crump v Gilmore* and *London Borough of Bromley v C*, adopted a different interpretation, they should not be followed." *Isle of Wight Council v Platt* [2017] UKSC 28.

RENTAL PERIOD. "We do not accept that a 'rental period' is synonymous with 'term' or 'duration'. We consider that in its everyday use this expression is understood to relate to the period in respect of which instalments of rent are due." *Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

REPAY. "78. The argument for the Lead Claimants is based primarily on the structure and wording of section 80. They point out that subsections (1) to (6) are concerned with the crediting or repayment of undue VAT to the supplier, not the consumer. In subsection (7), the words 'credit or repay' echo the language of earlier subsections, where they can plainly refer only to the repayment or crediting of the supplier. They submit that subsection (7) is similarly concerned with the supplier. Only a supplier of goods or services can 'account' for an amount to the Commissioners, and only a supplier can be 'credited' with an amount by them. Similarly, only a supplier can be 'repaid' by the Commissioners, since only he has paid them in the first place. Section 80(7) is thus designed only to exclude claims, otherwise than under the section, by persons who have a claim under the section. That argument was accepted by the Court of Appeal.

79. On behalf of the Commissioners, it is argued that the word 'repay' is capable of applying to any payment back by the Commissioners of VAT which they have received. From their perspective, there is a repayment if the VAT is refunded, whether to the supplier or to someone else. Furthermore, it is argued, it would be strange if section 80(7) barred a restitutionary claim by the supplier, but left the supplier's customer in a better position. Moreover, it is argued, section 80 establishes a statutory scheme for the restitution of VAT which was not due, which by necessary implication

excludes non-statutory restitutionary claims. The argument seeks to draw support from the decision of the Court of Appeal in *Monro v Revenue and Customs Comrs* [2008] EWCA Civ 306; [2009] Ch 69, where a common law claim was held to be excluded by a statutory scheme for the recovery of tax, since it would be inconsistent with the purpose of the scheme.

80. In agreement with the judge, I find the textual arguments inconclusive, when considered by themselves. The word 'repay' is capable of bearing a wider meaning than the one for which the claimants contend, but could also be construed more narrowly. A purposive construction of the provision points more clearly to the correct conclusion. In that regard, section 80(3) and (4) are particularly important." *Revenue and Customs v Investment Trust Companies* [2017] UKSC 29.

RETAINED CASE LAW. Stat. Def., "(a) retained domestic case law, and (b) retained EU case law" (European Union (Withdrawal) Bill 2017–19, Clause 6(7)).

RETAINED DIRECT EU LEGISLATION. Stat. Def., "any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day)" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

RETAINED DOMESTIC CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Bill 2017–19, Clause 6(7)).

RETAINED EU CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Bill 2017–19, Clause 6(7)).

RETAINED EU LAW. Stat. Def., "anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Bill 2017–19, Clause 6(7)).

RETAINED GENERAL PRINCIPLES OF EU LAW. Stat. Def., "the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Bill 2017–19, Clause 6(7)).

RETROSPECTIVE PROVISION. Stat. Def., "in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

ROOFING WORKS. "I reject the parties' respective submissions that the phrase 'roofing works' has a single meaning which is either restricted or not restricted to the roof covering as opposed to the structure supporting it. In my opinion the expressions 'roofing' and 'roofing works' are too general to have a single ordinary and natural meaning applicable in all cases where a construction contract requires to be interpreted. The meaning of 'roofing works' in a particular clause of the contract must depend upon context, reading the contract as a whole. In the context of this contract I consider that the defender's interpretation is to be preferred. The best indication of the context in which the words are used seems to me to be the subdivision of the works, and in particular those comprised within the sub-contract works, into work packages. Within WP 2400, one finds in the General Pricing Summary separate prices for preliminaries, structural steelwork, metal decking, roofing, and provisional sums. There is no doubt that the price for roof steel is included within structural steelwork and not roofing. It is not therefore surprising that when one proceeds from the General Pricing Summary to the Pricing Schedule, the items within WP 3600 (in a section entitled 'Cladding/Covering') include roof coverings, but do not include roof steelwork. A similar categorisation can be found in sub-contract document 4100 ('Scope of Works') which includes, within the pursuer's works, WP A2400 (steel frame), WP B2400 (main roof steel) and WP 3600 (roofing to main roof). Again the expression 'roofing' excludes the roof steel." *Martifer UK Ltd v Lend Lease Construction (EMEA) Ltd* [2016] ScotCS CSOH 66.

S

SATISFIED. "A second consideration is the wording of the test itself, and comparison with the wording of other provisions, such as those concerned with orders of an emergency character. In that regard, the most significant terms—'satisfied' and 'likely'—are common to both the Scottish and the English provisions. In particular, as Lord Nicholls observed in *In re H* at pp 585–586, the need for the court to be judicially 'satisfied' is an indication that unresolved doubts and suspicions cannot form the basis of the order, and can be contrasted with the statutory language used where suspicion may be enough (as, for example, in relation to orders under sections 35 and 37 of the Children's Hearings (Scotland) Act 2011). It also indicates that the burden of proof rests on the party seeking the order." *EV (A Child), Re (Scotland)* [2017] UKSC 15.

SERVICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'." *UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

SETTLED ACCOMMODATION. "The term 'settled accommodation' is not a statutory term, but has arisen in a series of cases concerning the ability of an individual, who has been intentionally homeless, to break the chain of causation by the intervention of a period in, what was first described by Ackner LJ, in *Din v Wandsworth BC* (June 23, 1981 unreported), as a 'settled residence'. That case, and those that have followed it, made it clear that, 'What amounts to "a settled residence" is a question of fact and degree depending upon the circumstances of each individual case.'

Those representing the defendant have brought to my attention, *Knight v Vale Royal RBC* [2003] EWCA Civ 1258, whilst those representing the claimant have brought to my attention, *Huda v Redbridge LBC* [2016] EWCA Civ 709. It seems to me that, as both of these cases are consistent in their approach to the law, and only differ in their conclusions on the facts, neither are of particular persuasive value; whilst the latter considered that the precarious nature of a licence entitled the reviewing officer to determine that the accommodation was not settled despite being occupied for a period of two years, the former concluded that an assured shorthold tenancy was capable of being settled accommodation, despite being able to be determined at the end of six months.

Whilst the allocation of social housing under the 2015 scheme is based upon the number of points awarded to individuals who fulfil certain criteria, I do not consider that this, of itself, is determinative of the meaning of the words 'settled accommodation'. The 2015 scheme is also a discretionary scheme involving

evaluative judgments to determine the prioritisation of scarce resources, dependent upon an applicant's and others' particular circumstances; such that whilst an individual who is not in settled accommodation may be awarded 40 welfare points if a member of her household has a sufficient need for and fulfils the other criteria, if an applicant is already in what can properly be considered to be settled accommodation, then there would be no basis for awarding such points.

Therefore, although I accept that the inclusion of the words, 'settled accommodation' in the 2015 scheme, would undoubtedly include the provision of Part VI social housing, I do not consider that it is necessarily limited to such accommodation. On the contrary, I consider that, depending upon the circumstances, and as a matter of fact and degree, the provision of Part VII accommodation may also amount to settled accommodation; such that, if the Part VII is not settled accommodation, then this may lead to an award of 40 category C welfare points if the applicant's household includes someone with a need for such accommodation, whilst if the Part VII accommodation is settled accommodation, there would be no basis for an award of 40 category C welfare points." *R. (on the application of C) v London Borough of Islington* [2017] EWHC 1288 (Admin).

SOLICIT. See CANVASS OR SOLICIT.

SOVEREIGN. "In all the circumstances, I do not consider that the Hearing Officer's finding that 'sovereign is a denomination of money' can be impugned. It had an evidential foundation and was one that could reasonably be reached.... The real question must, I think, be whether the fact that no one but RM can make sovereign coins for United Kingdom purposes means that the word 'sovereign' must be distinctive of its coins. I do not think it does. The Hearing Officer made unchallenged findings that 'the trade in gold commemorative coins is international in nature' (paragraph 62 of the Decision), that 'a small proportion of coins so-named [i.e. as "sovereigns"] have been produced outside of RM's control' (paragraph 62) and that '"sovereign" gold commemorative coins from, at least, the Isle of Man, Jersey, Gibraltar and/or Australia are also available in the UK' (paragraph 77). In fact, while sovereign coins from jurisdictions other than the United Kingdom commonly bear the word 'sovereign' (albeit, it may be said, with a word indicating the relevant country or territory), United Kingdom sovereigns hardly ever have, and RM's promotional material usually involves 'the designation "sovereign" used in association with the name Royal Mint' (paragraph 34 of the Decision).... It seems to me, though, that matters such as those mentioned in paragraph 41 above provided a sufficient basis for the Hearing Officer's findings. There was plainly evidence indicating that there are non-United Kingdom 'sovereigns' which are traded in the United Kingdom as part of a trade which is 'international in nature'. In the circumstances, the Hearing Officer was entitled, in my view, to conclude (as he did) that 'the word sovereign alone did not guarantee the trade origin of such goods [i.e. gold commemorative coins] because it had become customary in the current language or in the bona fide and established practices of the trade' (paragraph 78 of the Decision)." *Royal Mint Ltd v Commonwealth Mint and Philatelic Bureau Ltd* [2017] EWHC 417 (Ch).

STATE. "By article 2(1)(b) [of para 1 of the United Nations Charter], 'State' is defined in broad terms, as meaning: (i) the State and its various organs of government; (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity; (iii) agencies or instrumentalities of the State or other entities, to the extent

that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State; and (iv) representatives of the State acting in that capacity." *Belhaj v Straw (Rev 1)* [2017] UKSC 3.

SUBORDINATE LEGISLATION. Stat. Def., "means—

(a) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under any Act; or

(b) any instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales, and (except in Schedule 2 or where there is a contrary intention) includes any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made on or after exit day under any retained direct EU legislation" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

SUBSTANTIAL. "27. The admirably concise submissions of Mr Etherington QC for the appellant correctly point out that as a matter simply of dictionary definition, 'substantial' is capable of meaning either (1) 'present rather than illusory or fanciful, thus having some substance' or (2) 'important or weighty', as in 'a substantial meal' or 'a substantial salary'. The first meaning could fairly be paraphrased as 'having any effect more than the merely trivial', whereas the second meaning cannot. It is also clear that either sense may be used in law making. In the context of disability discrimination, the Equality Act 2010 defines disability in section 6 as an impairment which has a substantial and long-term effect on day to day activities, and by the interpretation section, section 212, provides that '"Substantial" means more than minor or trivial.' It thus uses the word in the first sense. Conversely, the expression 'significant and substantial' when used to identify which breaches by the police of the Codes of Practice under the Police and Criminal Evidence Act 1984 will lead to the exclusion of evidence (see for example *R. v Absolam* (1988) 88 Cr App R 332 and *R. v Keenan* [1990] 2 QB 54) is undoubtedly used in the second sense. It is to be accepted that the word may take its meaning from its context. It is not surprising that in the context of triggering a duty to make reasonable adjustments to assist the disabled, the first sense should be used by the Equality Act; the extent of adjustments required varies with the level of disability and a wide spectrum of both is to be expected. Mr Etherington additionally submits that this usage shows that the first sense does not entirely strip the word 'substantially' of meaning." *R. v Golds* [2016] UKSC 61.

SUBSTITUTION. "For the purposes of section 35(6)(a) of the 1980 Act and CPR Part 19.5(3)(a) the question was whether the judge could be satisfied that the Firm was 'substituted' for the Company which had originally been named in the Claim Form as defendant in mistake for the Firm. These provisions draw a clear distinction between addition, on the one hand, and substitution on the other. The ordinary meaning of the word substitution connotes the replacement of one person or thing by another. As Pearce LJ observed in *Davies v Elsby Brothers* [1961] 1 WLR 170 at 173, when considering the substitution of a party permitted under the rules in different circumstances, 'substitution involves the addition of a party in replacement of the party that is removed.'" *Godfrey Morgan Solicitors (A Firm) v Armes* [2017] EWCA Civ 323.

T

TAMPERING. "The term 'tampering' is not defined by the Road Traffic Act 1988. It bears its ordinary, everyday meaning. It clearly means something more than mere 'touching'. The *Oxford English Dictionary* defines tampering as 'interfering with something without authority or so as to cause damage'." *Js (A Child) v Director of Public Prosecutions* [2017] EWHC 1162 (Admin).

TRADE PROCESSES. "The central issue in this appeal can be shortly stated. It is whether the air handling system used by Iceland Foods Limited ('Iceland') in its retail store at 4 Penketh Drive, Liverpool (the 'premises') is plant or machinery 'used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' within the meaning of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (the '2000 Regulations').... I shall not repeat them, but it is important to understand that the scheme of the 2000 Regulations is that the plant and machinery described in the four scheduled Classes is rateable as part of the hereditament (see paragraph 2(a)(i)). Class 2 makes rateable certain plant and machinery used 'in connection with services to the hereditament'. It contains a general exception prefaced by the words 'other than', which is for 'any such plant or machinery which is in or on the hereditament and is used ... in connection with services mainly or exclusively as part of manufacturing operations or trade processes'. Class 1 makes clear that plant and machinery used for generation, storage or transmission of power is rateable. Class 3 makes certain transportation and distribution equipment rateable. Class 4 concerns other specialist industrial equipment where it is or is part of a building or structure. Within Class 2 itself, the items of plant and machinery enumerated as rateable in Table 2 include all kinds of heating, cooling and ventilating, lighting, water supply, draining and hazard protection equipment. At first sight, therefore, it would seem that plant and machinery used to keep the air in a building within a particular temperature range would be 'used in connection with services to the hereditament' and, therefore, rateable. Moreover, at first sight, the exception for 'plant or machinery ... used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' would seem to be directed towards services used as part of some manufacturing or process activity undertaken by the occupier on the hereditament.... It is not, in normal parlance, a trade process to apply 'a continuous treatment of refrigeration at all times using equipment to maintain food in an artificial condition where but for the refrigeration it would be rendered worthless'. If one removes the cumbersome wording, one can see that keeping food in its same frozen state so that it may be sold is not any kind of trade process. Once that is clear, all the other arguments fall away. I would, however, reiterate that the question is not whether the plant serves the hereditament or the tenant, but whether the plant is used in connection with services mainly or exclusively as part of a trade process. Retail warehouses undertake a trade but not normally any trade process, certainly not so far as keeping the shop or the

equipment therein at an appropriate temperature is concerned. Mr Kolinsky places too much weight on the requirement that the plant is used in connection with services mainly as part of a trade process. That is a secondary control, but not a primary one. Service equipment will be rateable unless it is used as part of a trade process. Keeping Iceland's freezers cool is not, in my judgment, a trade process, properly so called." *Iceland Foods Ltd v Berry (Valuation Officer)* [2016] EWCA Civ 1150.

TRIBUNAL. Stat. Def., "means any tribunal in which legal proceedings may be brought" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

TWITTER. "Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a mobile device app to post and interact with messages of not more than 140 characters, called 'tweets'. This much is common knowledge. But Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed, and set out in a Schedule called 'How Twitter Works', which is attached to this judgment as an Appendix. I shall employ the abbreviations used in the Appendix." *Monroe v Hopkins* [2017] EWHC 433 (QB).

U

UNDERTAKING. "There is no definition of 'undertaking' in the 1977 Act nor, in my view, is one really necessary. As a matter of language, the word can describe the company or other entity which employs the inventor either in terms of its organisational structure or simply as an economic unit." *Shanks v Unilever Plc* [2017] EWCA Civ 2.

UNDESIRABLE. "Turning to the meaning of the term 'undesirable' in this context I am satisfied that it is a word that calls for an exercise of planning judgment. I have reached that conclusion since it is an adjective with a potentially broad meaning and purview, used within the context of an approval process in planning legislation. The planning judgment to be made arises in the context of the qualified entitlement that Class Q creates and the purpose for establishing that qualified entitlement set out above. Given that conclusion, an error of law could only arise if that planning judgment were affected by one of the traditional public law grounds of challenge. I would not accede to Ms Clutten's submissions in so far as she seeks to argue that the term 'undesirable' is (like the noun 'eaves' in the *Waltham Forest* case) a word requiring an elaborate legal definition. It is a term which calls for a planning judgment from the decision-maker framed by the particular context in which it arises, namely that this is an application for prior approval of a form of permitted development created for the purpose of increasing the supply of housing, and not an application for planning permission. In my view it is perfectly reasonable to expect that this planning judgment will be reached against the backdrop of the purpose for creating this class in the first place." *East Hertfordshire District Council v Secretary of State for Communities and Local Government* [2017] EWHC 465 (Admin).

UNLAWFUL. "First, as a matter of the ordinary use of language it seems to me unnatural to describe a person's presence in the UK as 'unlawful' (which is not necessarily the same as not being 'lawful') when there is no specific legal obligation of which they are in breach by being here and no legal right to remove them—and all the more so where they have, as the Appellant did from the ages of four to 23, an absolute right at any time to acquire British nationality simply by making the necessary application." *Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 236.

V

VOUCHER. "Face-value voucher". Stat. Def., Proceeds of Crime Act 2002 s.303B(4)(c) inserted by the Criminal Finances Act 2017 s.15.

W

WITHDRAWAL AGREEMENT. Stat. Def., "an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU" (European Union (Withdrawal) Bill 2017–19, Clause 14(1)).

WORKER. "The expression 'employed' is not defined by the EU Regulations, but the concept of 'worker' has been elucidated by the CJEU. An essential feature is that 'a person performs services for and under the direction of another person in return for which he receives remuneration' (Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] 2 CMLR 454). In other cases, where a person is not a worker but provides services, freedom of establishment is available." *Hrabkova v Secretary of State for Work and Pensions* [2017] EWCA Civ 794.

WORKS. "It is readily understandable that the draftsman considered that a 'canal' could be regarded as falling within the generic concept of 'works', or, in some circumstances at least, within the concept of 'cuts'. It is the use of the word 'dock' in the proviso which we think has particular significance, because this, in our view, indicates beyond sensible dispute that the draftsman understood that such a structure, or work, could otherwise fall within the meaning of 'works'. And it was surely for this reason that the proviso needed to embrace docks as well as locks, canals and cuts. If docks had not been encompassed within the concept of 'works' in the deeming provision, there would have been no need for the proviso to exclude certain docks from its ambit. That, it seems to us, is a cogent enough reason in itself, within a conventional exercise in statutory interpretation, to sustain our understanding of the phrase 'locks cuts and works' in section 4 as including docks." *Environment Agency v Barrass* [2017] EWHC 548 (Admin).

WOULD. "Whilst accepting that the word 'would' may be used colloquially to express a conclusion based in chance, the context in which we must interpret it is not an everyday colloquial one, but one which underpins the test applied by the ET in assessing the appellant's loss." *Malcolm v Dundee City Council* [2017] ScotCS CSIH 32.

WRONGED. "Whether a service person has been 'wronged' is a different matter than whether he is the victim of a legal wrong. The concept is broader and more diffuse than that. Correspondingly the decision-makers at the various levels have to make a judgment as to how to approach the complaint and how to determine whether the complaint of being 'wronged' is 'well-founded'. While the decision-makers have some latitude and discretion as to how to approach their task, it is not limitless and they cannot do so in a way which no reasonable decision-maker could." *Ross v Secretary of State for Defence* [2017] EWHC 408 (Admin).